

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 225 OF 2002

Shri Tukaram Jijaba Kohinkar ..Petitioner

Vs.

Shri Bhau Govinda Kohinkar and ors. ..Respondents

Mr. U.B. Nighot for the petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : July 25, 2005.

P.C.:

. Regular Civil Suit No.79 of 193 was decreed on 1-12-1995 and the plaintiff deposited an amount of Rs.500/- for execution of the sale deed in Regular Darkhast No.5 of 1997. In the said Darkhast one Mrs.Geetabai Aavrude and two others filed an application pointing out that they were the real sisters of the Judgment Debtor and, therefore, the decree passed in favour of the decree holder could not be executed. This application at Exh.17 was heard and it came to be allowed by the impugned order dated 15-6-2001 passed by the learned Joint Civil Judge, Jr. Division at Khed. There was no dispute that the suit

property i.e. agricultural land admeasure 20 ares from Survey No.456/1 which admeasure totally 97 ares. The Eastern side portion admeasure 20 ares from the said larger property was already sold and if the decree was directed to be executed by signing and registering the sale deed between the parties for another 20 ares land, there would be a fragment, not permissible in law i.e. the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Section 31 therein clearly bars creation of fragmentation. In addition, the applicants being the real sisters of the Judgment Debtor they were the necessary parties in the suit proceedings and they were not so impleaded in RCS No.79 of 1993 which was decreed and the decree was under execution. The suit was, therefore, hit by the provisions of Order 1 Rule 9 of C.P.C. The reasoning given by the trial court in support of the impugned order is thus unimpeachable.

. The Civil Revision Application is rejected summarily.

:3:

(B.H. Marlapalle, J.)